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No. 91

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, APPELLANT

v.

ROY FRUEHAUF, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE DAVE BECK

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OPINION BELOW

The ruling of the District Court has not been reported, but is set forth at pages 42-47 of the transcript of the Record.

QUESTION PRESENTED

Section 302 of the Labor Management Relations Act of 1947 made it unlawful for an employer to "pay or deliver" to a representative of any of his employees in an industry affecting interstate commerce, or for such representative to "receive or accept" from the employer, "any money or other thing

of value." The question is whether this section is violated by a bona fide loan of money where the recipient, in consideration for the loan, executes a promissory note, repays the principal, and pays interest for the use of the money.

STATUTES INVOLVED

The Indictment was based upon Section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157; 29 U. S. C. 186). The pertinent provisions of the Act provided:

> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> * * * * *
>
> (d) Any person who wilfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

After the transaction involved in this case had been disclosed to the Congress, and after repayment of the loan by Appellee Beck,[1] the foregoing Section

[1] Hearings Before The Select Committee On Improper Activites In The Labor Or Management Field, Part 7, Pages 2197-2221.

was amended by the passage of Section 505 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 537). The statute now reads as follows:

> (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce * * *.
>
> (b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).
>
> * * * * * *

STATEMENT

The Indictment was filed on June 27, 1959. Count One of the Indictment makes no charge against the Appellee Beck. In Count Two of the Indictment it was charged that the Appellee Beck:

> "did unlawfully, wilfully and knowingly receive and accept and agree to receive and accept from ROY FRUEHAUF, FRUEHAUF TRAILER CO., BURGE SEYMOUR, ASSOCIATED TRANSPORT, INC. and BROWN EQUIPMENT AND MANUFACTURING CO., employers of the aforesaid employees, a thing of value, to wit, money, in the amount of $200,000."

On February 18, 1960, the United States amended the Indictment by the filing of a pre-trial memorandum disclosing that the charge in the Indictment was based upon a loan, rather than an unconditional delivery and receipt of money (R. 10-14).

According to the memorandum (R. 10-14), Beck, in 1954, requested a loan of $200,000 from Appellee Fruehauf. Thereafter, the subject was discussed in a meeting attended by an attorney for Beck. The meeting was not attended by Beck. After this meeting, an attorney for Fruehauf attempted to place the loan at various banks, but was unsuccessful. The loan was then made to Beck from Brown Equipment and Manufacturing Co.

The pre-trial memorandum does not assert that Beck had any knowledge of other details of the transaction or, indeed, that Beck had any knowledge that he represented any employees of Brown Manufacturing and Equipment Co. (assuming that he did in fact represent such employees).

Upon disclosure of the facts relied upon in the pre-trial memorandum, the Appellees moved to dismiss the Indictment (R. 15). The District Court interpreted the Indictment, as amended by the pre-trial memorandum, as being a loan transaction; and the Court dismissed both Counts of the Indictment upon the ground that the statute did not prescribe

loans (R. 42). The Court did not pass upon the contention that the pre-trial memorandum constituted a fatal variance and an unauthorized amendment of the charge of the Grand Jury (R. 17, 32, 46).

ARGUMENT

Appellee has read and knows the contents of the Brief filed by the other appellees in this case. The arguments there made apply equally to Count Two of the Indictment. Accordingly, Appellee Beck, with the permission of the other Appellees, hereby adopts and submits these arguments, as well as the oral argument to be made on behalf of the other Appellees herein.

CONCLUSION

It is respectfully submitted that the Judgment of the District Court should be affirmed.

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